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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/641,704

08/18/2003

Jose A. Soto

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05/11/2006

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EXAMINER

HAGHIGHATIAN, MINA

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/641,704

Applicant(s)

SOTO, JOSE A.

Examiner

Mina Haghighatian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-8, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-8, 14-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of the Amendments and Remarks filed on 02/20/06.

Claims 2-3 and 9-13 are cancelled, claims 1 and 5-8 are amended and new claim 15 is added. Accordingly claims 1, 4-8 and 14-15 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 15 are rejected for depending on cancelled claims. Claim 4 depends on the now cancelled claim 3 and claim 15 depends on the now cancelled claim 12.

Note: claim 6, line 6 is missing the word "to" after --according--.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 14 is rejected under 35 U.S.C. 102(e) as being anticipated by Yvin et al (6,451,352).

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Yvin et al teach use of iso-osmotic saline solutions in particular obtained from seawater, to obtain a medicine designed for a treatment preventing and limiting the release of chemical mediators responsible for causing inflammatory phenomena in the human respiratory tracts. To accomplish this, Yvin administers to a patient an effective amount of seawater made iso-osmotic, the seawater being in the form of aerosols or nebulisates wherein the seawater comprises elements such as sodium, calcium, magnesium, etc (see col. 1 and claims 1-2). The said iso-osmotic solution has an osmolarity of from 305 to 315 mOs/kg and a chemical constitution constituting elements such as sodium, potassium, chloride, calcium and magnesium. The raw material is a **seawater** taken for example at the **depth of 5 to 10 meters in an area of strong movement of streams**. The said seawater is analyzed, decanted, filtered and stored. Table A discloses typical amounts of each element present in the formulation (col. 2, lines 1-44).

Allowable Subject Matter

Claims 1 and 5-8 are allowed.

Claims 4 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 02/20/06 have been fully considered but they are not persuasive with regard to claim 14.

Applicant states that 'there is no indication of any references where the seawater is extracted from a depth that will ensure stability'. This is not persuasive because 1) Yvin is clearly stating that "The raw material is a **seawater** taken for example at the **depth of 5 to 10 meters** in an area of strong movement of streams. 2) Claim 14 states "a depth beyond where microscopic organism known as plankton lives". This is a relative term and a relative measurement with no known scope. It is considered that Yvin's disclosure clearly reads on this limitation. The remaining steps are both conventional and disclosed by Yvin.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mina Haghighatian whose telephone number is 571-272-0615. The examiner can normally be reached on core office hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mina Haghighatian
May 10, 2006


Johann Richter, Ph.D. Esq.
Supervisory Patent Examiner
Technology Center 1600